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UNCLAS SECTION 01 OF 02 ANKARA 001652

SIPDIS

DEPT FOR EB/TPP/MTA/IPE - SWILSON/JURBAN AND EUR/SE DEPT
PASS USTR FOR JCHOE-GROVES
DEPT PASS LIBRARY OF CONGRESS FOR STEPP
DEPT PASS USPTO FOR JURBAN AND EWU
USDOC FOR ITA/MAC/DDEFALCO AND JBOGER

SENSITIVE

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [TU](#)

SUBJECT: SPECIAL 301: Update on Copyright/Trademark Protection

REF: Ankara 971

11. (U) Summary: A judge in Turkey's specialized intellectual property courts outlined difficulties in rendering effective IP enforcement as well as recent and forthcoming changes in Turkey's IP regime. Turkey's Trademark Association reported a rise in anti-counterfeit court cases. The GOT provided seizure statistics and a roundup of recent legislation in a recently-issued investment climate report. End Summary.

Current Issues in the IP Court System

12. (SBU) In a meeting with Econoff and Econ Specialist on March 4, Turkey Alica told us that IP enforcement is hampered by the fact that most cases involve petty street merchants rather than key figures in pirate networks. Alica, who became the first judge in recent memory to hand down a sentence of imprisonment in an IPR case, maintained that criminal penalties have a greater deterrent effect than civil penalties in the Turkish context because of the difficulty or impossibility of recovering damages from street sellers. The court system is further taxed by repeat trials for some convicted pirates, required because 2004 legislation reduced penalties for some IP crimes. These retrials add at least six months to a case, and as much as an additional two years if the case is appealed to the Supreme Court. Alica told us the Ankara IPR Court had made 260 rulings and finalized 60 percent of its pending cases as of December 2004.

13. (SBU) Alica noted the impact of new and prospective legislation and regulations. He noted that the GOT plans to introduce new trademark legislation to replace the current decree with the force of law. The draft trademark law defines the infringement crimes in detail and governs whether cases will be subject to criminal or civil provisions. A new copyright bill focuses on banderole control and enforcement. The judge also explained that the new Criminal Code entering into force April 1 will create alternatives in dispute resolution. According to the new code and with the consent of the parties, public prosecutors will in some cases be authorized to appoint a mediator rather than sending the case through the judicial process. Alica also said that the recent Ministry of Justice decree on investigating convicted pirates for tax evasion should increase both deterrents to piracy and public awareness of the problem (reftel).

Trademark Owners on Increased Court Cases

14. (SBU) Representatives of the Trademark Association (TMD) recently told the press that they expected the Justice Ministry decree and the new Criminal Code to have a deterrent effect on counterfeiters. The press reports an upswing in court cases against counterfeiters following issuance of the decree, including cases launched by Pfizer and Hewlett Packard. TMD President Selcuk Guzenge claimed that the counterfeit market in Turkey was as high as much as USD 4 billion and generated exports of USD 200 million. These figures are compiled from member company estimates, and exclude counterfeit pharmaceuticals. Guzenge told us that he believes that the GOT is focusing more on copyright piracy than on trademark counterfeiting, and said his organization will launch a "No to Counterfeit" campaign in the near future.

Investment Climate Report Includes IP Review

15. (U) Following up on recommendations generated at the 2004 Investor Advisory Council (IAC) meeting, which

brought the Prime Minister together with CEOs of major multinationals, the GOT issued a Progress Report (see http://www.hazine.gov.tr/ybs/ydk_rapor_eng.pdf), which includes a section on efforts to strengthen intellectual property protection. In particular, the GOT reports seizure data for the period since March 2004 as follows:

- Compact disks (1,048,832),
- VCDs (365,231),
- DVDs (24,065),
- Books (35,008) and
- Tape cassettes (23,801).

16. (U) The IAC report also notes the following legislation adopted in 2004:

- Law 5101 amending various laws (related to copyright, including the ban on street sales);
- Law 5147 on Protecting Integrated Circuitry Topographies
- Law 5118 on Ratification of Trademark Law Treaty
- Law 5117 on Ratification of the Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs. Edelman